

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

COOPERATIVE AGREEMENT

THIS COOPERATIVE AGREEMENT made and entered into by and between the CITY OF EL PASO, a home- rule municipal corporation of El Paso County, Texas, by and through its duly authorized officials and hereinafter referred to as “City”, and the COUNTY OF EL PASO, State of Texas, by and through its duly authorized officials, hereinafter referred to as “County”, and in accord with the requirements as stated in Texas Health & Safety Code Sections 121.041 and 121.044, WITNESSETH:

I. CONTINUATION OF PUBLIC HEALTH DISTRICT

This Cooperative Agreement amends and supercedes that Cooperative Agreement dated March 6, 2001, as amended (the 2001 Agreement), and serves to rescind any request heretofore given by the County to dissolve the District. The City and the County agree to continue a public Health District known as the El Paso City-County Health and Environmental District, hereinafter referred to as the “District”, in accordance with Texas Health & Safety Code 121.041. The District shall be continued as of March 4, 2005, regardless of when this agreement is executed, as authorized by Texas Health & Safety Code 121.041, or any subsequent statute passed by the State Legislature authorizing the formation of public health organizations among political subdivisions of the State of Texas. The members of the District are the City and the County. The El Paso City-County Health and Environmental District is a political subdivision of this state pursuant to Health & Safety Code Section 121.043 and Texas Civil Practice & Remedies Code. 101.063.

Within 45 days of March 4, 2005, or sooner if possible, the health district budget for the remainder of the District’s Fiscal Year 2004-2005 shall be amended by the parties pursuant to this Agreement. This deadline may be extended by agreement of the parties evidenced by a commissioners court order and a city council resolution.

II. PUBLIC HEALTH BOARD

On the effective date of this agreement a new eleven (11) member administrative public health board, to be known as the El Paso City-County Board of Health, herein referred to as the “Board”,

shall be appointed. Existing board members may be reappointed by their appointing authority. Existing board members shall serve until their successors are appointed. The Board shall have the authority to adopt substantive and procedural rules and regulations which are necessary and appropriate to promote and preserve the health and safety of the public within its jurisdiction, provided that such rules shall be specifically authorized by state law, and no rule or regulation adopted shall be in conflict with an ordinance of any member municipality or county. A majority of the Board shall constitute a quorum for conducting business.

1. Appointment

The eleven (11) members of the Board shall be appointed as follows: five (5) shall be appointed by the El Paso County Commissioners' Court and five (5) shall be appointed by the El Paso City Council. The remaining member, who shall serve as the Chairperson, shall be a joint appointment by agreement of the Mayor and County Judge. Replacement appointments to fill the remainder of an un-expired term shall be made by the same governing body that appointed the exiting Board member.

Regular appointments shall be as follows: five (5) of the two-year term appointments shall be made each year and the joint Chairperson two-year term appointment shall be made every other year. In the first year of this agreement, board appointments shall be effective March 4, 2005. Half of the terms shall expire August 31, 2005 and half shall expire August 31, 2006. Thereafter, all regular appointments will be effective September 1st of the appropriate year.

2. Membership Requirements

Two (2) members shall be qualified, licensed and practicing physicians, nominated by the Medical Society of the County, with one (1) appointed by the City and one (1) by the County; one (1) member shall be a qualified, licensed and practicing dentist, nominated by the Dental Society of the County, to be appointed by the City; one (1) member shall be a qualified, licensed and practicing veterinarian, nominated by the Veterinary Association of the County, to be appointed by the County; one (1) member shall be a licensed, practicing professional engineer, nominated by the El Paso Society of Professional Engineers, to be appointed by the County; one (1) member shall be a licensed, practicing registered nurse, nominated by the El Paso Nursing Association, to be appointed by the City; one (1) member shall be the City Manager, Mayor, or City Representative, as designated by City Council; one (1) member shall be the County Judge or a County

Commissioner, as designated by Commissioners Court; and two (2) members in addition to the Chairperson shall not be restricted as to occupation, with one (1) appointed by the City and one (1) by the County. All licensed/registered professionals shall be licensed/registered by the State of Texas.

Each Board member must have resided within the territorial limits of the District for a minimum of three (3) years prior to selection. No Board member shall be appointed to the same Board position by the same appointing entity to serve more than two consecutive regular terms. Notwithstanding the foregoing, the City Manager/Mayor/City Representative Board member and the County Judge/County Commissioner Board member shall be exempt from the two-term limit and may be reappointed by the City Council or Commissioners Court to as many terms as desired by the governing bodies. All Board members shall serve without compensation.

3. Removal

A member of the Board may be removed for good cause by a vote of at least two-thirds of the remaining Board members present and voting, provided that there is a quorum present. Such action may be initiated by the Board Chairperson or any Board Member. The member(s) in question shall be provided an opportunity to be heard by the Board before the vote is called. Absence from three consecutive regular Board meetings, or from five regular meetings in any twelve month period, whether consecutive or not, shall result in automatic removal, in which case the Board shall declare a vacancy and notify the appointing authority of the un-expired term to be filled.

4. Duties of the Board

The Board shall, subject to final budgetary approval of the City and the County:

- a. Adopt the organizational structure of the District utilizing the approved budgetary staffing allocations.
- b. Adopt the annual budget for the District.
- c. Adopt policies to guide the Director in managing District staff.
- d. Establish performance measures and annually evaluate the Director.
- e. Determine the Director's compensation to be included in the budget for the following fiscal year.

- e. Adopt policies and procedures designed to promote the public health and safety of the community, in accordance with all relevant ordinances and statutes.
- f. Institute such disease prevention investigations and surveys necessary to meet the Board's public health responsibilities.
- g. Conduct regular monthly Board meetings to address the District's business and solicit public input subject to the Open Meetings Act.
- h. Conduct such special meetings and hearings as necessary to address emergency or unanticipated public health needs of the community.
- i. Establish such subcommittees as desired to make recommendations to the Board and adopt such rules as needed to govern the operations of the Board.

5. Finance Committee

A five (5) member Finance Committee for the District shall be established to review and make recommendations to the Board, the County, and the City regarding the finances and budget of the District and perform any other duties described herein. The Finance Committee shall be comprised of a Board Member appointed by the Board Chair, a Board Member appointed by the Commissioners Court (who shall serve as Finance Committee chair during even-numbered fiscal years), a Board Member appointed by the City Council (who shall serve as Finance Committee chair during odd-numbered fiscal years), an appointee of the Deputy City Manager for Administrative Support, and an appointee of the County Auditor. The District Director shall be an ex-officio member of the Finance Committee. The Finance Committee shall meet at least bi-monthly and more often as necessary to carry out the duties assigned to it herein. A quorum of four (4) shall be required to conduct business. Any board member may be appointed by either the City Council or the County Commissioners Court to the Finance Committee. Any Finance Committee appointee may be replaced by the entity/person who appointed him/her at any time and without cause.

III. FUNDING AND BUDGET

1. Transition Period.

Beginning on the effective date of this Agreement and continuing until August 31, 2005 all costs of the District operation not covered by other revenue sources, both Activity Based Programs and

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Formula Driven Programs, shall be funded by the City in the amount of Seventy Percent (70%) and by the County in the amount of Thirty Percent (30%).

2. District Funding.

Thereafter, beginning on September 1, 2005, all Health District operations shall be divided into two (2) categories designated Activity Based Programs and Formula Driven Programs. Activity Based Programs shall be funded on the basis of the cost of each unit of service delivered in the City, the unincorporated areas of the County, or other incorporated cities with which the District contracts. Formula Driven Programs, which are not reasonably capable of unit cost calculation, shall be funded by the City in the amount of Seventy Percent (70%) and by the County in the amount of Thirty Percent (30%). These Formula Driven Programs funding percentages are in consideration of the equal control and shared governance of the District by the City and the County. A third category of Health District Operations for special or emergency programs or projects may be added to the budget of the District at any time by agreement of the parties with funding responsibilities for said programs or projects to be determined by the parties.

The Health District shall be funded by the City, County and any other participating jurisdictions based on mutually agreed upon service activity levels for each respective jurisdiction and the District as a whole from year to year. Cost to each respective jurisdiction shall be net of any and all revenues collected on behalf of those jurisdictions.

As a part of the budget adoption process, the City and the County shall communicate with the District regarding the efficacy, service levels, costs, and revenues of all District programs, including Activity Driven, Formula Based, and Special/Emergency Programs. The City and the County shall utilize said information in their consideration of District funding for the next fiscal year. Either the City or the County may unilaterally reduce its budget and appropriation for Activity Based Programs due to a desired reduction in services or activities in its jurisdiction; provided however, such reduction shall not exceed ten percent (10%) of the actual appropriation by such entity for the prior fiscal year.

3. District Budget, Accounting, and Records.

The District budget shall be reported as a discretely presented component unit in the City's Financial Statements in accordance with Generally Accepted Accounting Principles and GASB Statement 14. All funds received and disbursed by the District from all sources shall be separately

accounted for and in no way commingled with any other funds. The District's records shall be maintained so that accounting records adequately detail accounting transaction at all times in order to provide a full financial accounting of the District. This requirement does not preclude the Health District from maintaining its funds utilizing City depository accounts but emphasizes being separately accounted for as a stand alone financial entity which can be accomplished within the City's financial systems.

4. Budget Preparation and Approval

The Finance Committee shall control the preparation, content, and organization of the proposed District Budget. It shall include the funds necessary to operate the District, including costs for staff salaries, supplies, suitable offices, health and clinic centers, health services, programs, facilities, and maintenance, and shall indicate all revenue sources and amounts. Indirect costs may be included in the calculation of all program costs. As a part of the annual budget adoption process for the District, all Activity Based Programs, Formula Driven Programs, and Special/Emergency Programs, if any, shall be listed in detail, by program, specifying program costs, operating costs, revenue/indirect services credits, and service costs for each of the parties and attached to the proposed budget of the District for presentation to the City and the County. The proposed budget shall show all revenues, expenditures, and proposed costs for the fiscal year.

The District shall prepare as part of its proposed Budget for each fiscal year a Capital Improvement Plan. Proposed debt funded capital expenditures shall be detailed and, if approved in the Final Budget, may be funded by the City and/or County through their own interest and sinking funds by the agreement of the City and County on a case by case basis. Debt funded capital expenditures shall be accounted for separately from the District's maintenance and operation expenditures.

To facilitate and coordinate the preparation of the District's budget for each fiscal year, the District staff shall meet with the Finance Committee in March to begin preparation of the budget for the next fiscal year. By April, the Finance Committee shall present the draft budget to the District Board of Directors for its approval. By the end of May, the Finance Committee shall present a final budget, which has been approved by the District Board of Directors, to a joint meeting of City Council and the Commissioners Court for their consideration and approval.

5. City and County Appropriations

The City and County shall each appropriate in accordance with their budget adoption process their respective shares of the approved District Budget as provided herein.

6. Payment

The City and the County shall pay into the District's account one-twelfth (1/12) of the estimated annual funding obligation of each party on the first business day of each month of the fiscal year, without demand. Not later than ninety (90) days after receipt of the annual audit of the District for each fiscal year within the term of this agreement or after termination of this agreement, the Health District shall make a reconciliation of any difference between actual payments and the actual expenditures and revenues during the fiscal year. The reconciliation shall be accomplished by the Health District making any transfers of funds necessary to ensure that the amount paid by each party during the fiscal year is equal to the its funding obligation as established by the adopted funding formula. Any transfers of funds made pursuant to the reconciliation shall be made within one hundred twenty (120) days following receipt of the District's separate, stand alone annual audit performed by an independent accounting firm, but in no event shall such reconciliation payment be later than March 1st of each year. The obligation to make the reconciliation and any funds transfer pursuant to reconciliation shall survive the termination of this agreement.

7. Budget Amendments

All amendments to the District's approved Budget shall be proposed by the Finance Committee.

The Board shall delegate approval of budget amendments transferring funds from one line item to another, in an amount set by the Board but not to exceed Fifty Thousand Dollars (\$50,000.00), to be made by the Finance Committee. The Finance Committee shall provide notice of such budget amendments to the Board at its next meeting. All Budget amendments transferring funds from one line item to another in excess of that amount shall be approved by the Board. The District shall provide notice to the City and the County of all approved Budget amendments transferring funds from one line item to another in each quarterly report by the District.

All proposed amendments to the District's approved Budget which increase or decrease the overall Budget of the District shall be presented to and approved by the City and the County.

Notwithstanding the foregoing paragraph, ANY proposed amendment to the District's budget which appropriates funding for a grant match for a new grant which is not included in the District's approved budget shall be presented to and approved by the City and the County at the time the new grant is applied for by the District. Said approval by the City and the County shall be conditioned upon actual award and receipt of the grant applied for.

IV. MANAGEMENT AND OPERATION

1. Management and Operation

The Board shall manage and operate the District in accordance with federal and state laws, regulations, and rules, now in effect or hereafter promulgated and in accordance with its approved adopted budget. Except as otherwise provided herein, the Board may adopt such administrative policies and procedures as it deems reasonable and necessary to carry out its duties.

The District shall employ sufficient personnel to operate the District in an effective manner as provided in its annual budget and staffing table and which is acceptable to the Texas Department of Health for the purpose of qualifying for state matching funds for the operation of the District. To facilitate the general administrative support provided by the City, the District shall adopt personnel classifications, which are compatible with City payroll and personnel systems.

The District may contract for the goods, services, and grants necessary and prudent for the operation of the District. However, the District's contractual obligations shall not exceed the annual budgetary allocations made by the City and the County and all District contracts must be approved in accordance with such administrative procedures as may be required in the City's financial and procurement policies.

The District shall provide such reports and information as may be requested by the City or the County.

Unless otherwise prohibited by law, the District may provide services related to public health in other incorporated areas within the county, provided such services are wholly funded by the incorporated cities where the services are to be performed.

2. Legal Liability

The District is an independent political subdivision of the State of Texas and therefore, neither the City nor the County shall be liable for any action or failure to act of the District, its officers, agents, or employees, nor for any condition or use of property pursuant to the Texas

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Practice & Remedies Code Section 101.063. The District shall budget and appropriate sufficient funds for the purpose of paying its legal liabilities and shall be responsible for evaluating and approving or denying all legal claims and actions against it in consultation with its attorney. The attorney for the District shall maintain an attorney/client relationship with the District and shall regularly report the status of legal claims and actions against the District to the Board. The attorney for the District may communicate and confer with the attorneys for the City and the County as needed. The District shall be required to carry insurance for any errors and omissions, with funding for such insurance to be included in the District's annual budget.

However, should a court of competent jurisdiction enter a final judgment for damages against the City or County or both, regarding liability arising from the operation of the District, the parties shall be entitled to contribution from each other to the extent of the percentage of their actual contribution to the total audited expenditures to the District as reflected in the most recent fiscal year end of the District for the year in which the cause of action arose as allowed by law.

V. ADMINISTRATIVE SUPPORT

The City shall provide administrative support to the District as more fully described on Schedule A, which may be amended from time to time by agreement of the parties. The City Manager shall be the point-of-contact at the City for communications regarding administrative support by the City to the District. The City shall serve as the fiscal agent for the District, utilizing a separate enterprise-type fund in accordance with GASB. The fiscal year of the District shall coincide with the fiscal year of the City.

The District shall provide such reports and information as may be requested by the City, the County, the Board, or the Finance Committee. The District's records shall be maintained so that accounting records adequately detail accounting transaction at all times in order to provide a full financial accounting of the District.

VI. CHANGES TO THE DISTRICT TERMS OF OPERATION

Criteria and procedures for the admission, withdrawal and expulsion of governmental entity members of the District shall be developed by mutual agreement of the existing members.

The Cooperative Agreement may be modified at the recommendation of the Board, subject to the approval by the City and the County, provided the changes are in compliance with State public health rules and regulations.

VII. HEALTH DISTRICT DIRECTOR

1. Duties

The Director shall be appointed jointly by the City and County and shall be responsible for District operations pursuant to Texas Health and Safety Code Section 121.045.

The Director shall:

- a. Serve as an ex-officio, non-voting member of the Board.
- b. Serve as chief administrative officer of the District.
- c. Make routine and special reports to the Texas Department of Health, the Board, the City and the County.
- d. Successfully accomplish the annual performance measures established by the Board.
- e. Develop effective liaison and relationships with community agencies, medical entities, governmental bodies, focus groups, businesses, regulatory agencies and the public to discharge the public health mandate.
- f. If the Director is a physician and if so designated by the City and County, serve as the Health Authority for the District pursuant to Texas Health & Safety Code Section 121.045.
- g. If the Director is not the Health Authority, appoint a physician as the Health Authority for the District, subject to the approval of the parties and the Board.
- h. The Director shall review the pertinent state rules and regulations regarding the District and within sixty (60) days following the end of each State regular legislative session or any applicable special session, shall report to the Board on same.
- i. The Director shall enact and implement appropriate divisional policies and procedures for District program operations.

2. Removal

The Director may be removed from office at any time by approval of both the Commissioners' Court and City Council, with or without recommendation of the Board, and with or without cause; provided, however, the Director shall be provided an opportunity to be heard by such governing bodies before the vote is taken. However, should the Director simultaneously serve as the duly appointed Health Authority, he/she may be removed as the Director as provided herein, but he/she may only be removed as the Health Authority for cause as set forth in Texas Health and Safety Code Section 121.025

VIII. DISSOLUTION OF DISTRICT

Procedure for the dissolution of the organization shall be initiated at the request of the City or County through the Director, at which time all members will be consulted. Dissolution may not occur prior to six (6) months after such dissolution is requested by the City or the County, unless mutually agreed otherwise. The Director shall use every means to coordinate an orderly dissolution and shall receive the advice and support of the Board. All actions shall be exercised in accordance with existing local, state and federal rules and regulations as they pertain to the termination of personnel, distribution of joint property and the responsibility to provide for services.

IX. MISCELLANEOUS

1. Any and all notices required to be given by one party to the other under the terms of this Agreement shall be in writing and shall be effective only if sent by certified mail, return receipt requested, to the following addresses:

City of El Paso
Attn.: Mayor
2 Civic Center Plaza
El Paso, Texas 79901

County of El Paso
Attn: County Judge
County Courthouse
500 E. San Antonio
El Paso, Texas 79901

El Paso City-County Health
& Environmental District
Attn.: Director
5115 El Paso Dr.
El Paso, Texas 79905

2. For the purpose of determining the place of contract and the law governing same, this Agreement is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in El Paso County, Texas.
3. All persons that are signatories to this Agreement represent that they have authority to enter into this Agreement and bind their respective organizations thereto.
4. This writing constitutes and expresses the entire agreement between the parties and shall not be amended or modified except by written instrument signed by both/all parties.

IN WITNESS WHEREOF, APPEAR THE FOLLOWING SIGNATURES AND SEALS:

ATTEST:

THE CITY OF EL PASO

City Clerk

Mayor Joe Wardy

Date: _____

ATTEST:

THE COUNTY OF EL PASO

County Clerk

County Judge Dolores Briones

Date: February 28, 2005

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

Jorge C. Magaña, MD, FAAP
Director
El Paso City-County
Health & Environmental District

Assistant City Attorney

APPROVED AS TO FORM:

Assistant County Attorney